

**227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-42750-2022

Date of decision : 21.09.2022

Tejbir

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Rajesh Bansal, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.0133 dated 25.02.2022, under Section 365 of IPC (Sections 363, 366-A, 376 of IPC and Section 4 of The Protection of Children from Sexual Offence Act, 2012 added later on), registered at Police Station Thanesar Sadar, District Kurukshetra.

Adumbrated facts of the case are that the father of the victim lodged the complaint with the police. It was alleged that his daughter i.e. the victim is a student of 9th class. On 25.02.2022, she went to the school but did not return. On asking of the school teacher, he was informed that after dispersal, she went back home. They searched her everywhere however, failed to trace her. The age of the victim told was 15 years. The request was made to trace his daughter. On the basis of the complaint, the FIR was lodged and the investigation commenced. During investigation, the victim was recovered on 6th March, 2022 from the custody of the petitioner. The investigating agencies tried to medically examine the

prosecutrix. However, on the first instance, she refused however, later on, she agreed and thus, she was medically examined on 26.03.2022. She was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C. which was recorded on 07.03.2022 itself. The petitioner was arrested on 18.04.2022 and thereafter produced before the Magistrate on 07.03.2022. The petitioner has approached the Court of learned Additional Sessions Judge (Fast Track Special Court), Kurukshetra praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge declined the same vide her order dated 2nd September, 2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that the petitioner is a young boy of 19 years of age and has been falsely implicated in this case. He has submitted that from the reading of the allegations in the FIR, it is apparent that the petitioner and the prosecutrix both were in a consensual relationship. He has submitted that as per the facts of the case, the prosecutrix went missing from the school since 25th February, 2022 and thereafter, she was recovered on 6th March, 2022 i.e. after about 9 days. He has submitted that during this period, both the petitioner and the prosecutrix have been travelling by public conveyance and visiting public places and there is no *iota* of evidence to show that the petitioner has done any coercion for kidnapping the prosecutrix. He further submits that the petitioner has no criminal antecedents whatsoever. He has submitted that the prosecutrix has emphatically deposed in her statement under Section 164 Cr.P.C. that she has

solemnized marriage with Tejbir on 27.02.2022 with her own sweet will. The marriage was solemnized at Hanuman Mandir, Ladwa. She further deposed that she wanted to live with Tejbir and her parents were against her marriage. Learned counsel for the petitioner advanced his arguments by submitting that the trial Court has examined the prosecutrix and her parents i.e. the prosecutrix/victim as PW-2, her father as PW-3 and her mother as PW-4 respectively. He submits that both these material witnesses have not supported the case of the prosecution and were declared hostile. He submits that once the prosecutrix and the complainant themselves have not supported the case of the prosecution and the false implication of the petitioner is writ large. He has submitted that in the facts and circumstances of the case, the petitioner deserves to be granted bail.

Learned State counsel, on instructions from SI Moman Singh, has submitted that even if the prosecutrix is a consenting party, the same has no legal sanctity as she is minor. He submits that as per the opinion of the doctor, sexual abuse of the prosecutrix is proved. However, he candidly acknowledged that the prosecutrix did not support the case of the prosecution while recording the statement under Section 164 Cr.P.C. and while entering the witness box as PW-2. He further submits that her father who is author of the FIR has also not supported the case of the prosecution. As per the instructions, the petitioner has no criminal antecedents as except the present case, he has not been involved in any other case.

I have heard counsel for the parties and perused the record.

Evidently, the prosecutrix went missing from her home on 25th February, 2022 and thereafter, she was recovered on 6th March, 2022.

On her recovery, her statement was recorded under Section 164 Cr.P.C.

wherein she deposed that she has married with the petitioner. She and her parents were examined by the trial Court i.e. victim as PW-2, her father as PW-3 and her mother as PW-4 respectively but they have not supported the case of the prosecution and thus, they have been declared hostile. There is nothing on record to show that the petitioner has any criminal antecedents. Even otherwise, the material witnesses already stand examined as submitted by the learned counsel that out of 17 prosecution witnesses, 04 witnesses already stands examined. Once the prosecutrix and the complainant already stands examined and the parents have not supported the case of the prosecution, the possibility of the petitioner influencing the prosecution witnesses also no more survives.

The veracity of the allegations would be assessed only after the conclusion of the trial. However, this Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficient long time. However, confining itself to the prayer made for bail, this Court finds that counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

21.09.2022
m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No